IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 312 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

NOORJAHAN MEHBOOBBHAI

Appearance:
MR MIHIR JOSHI with MR M R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH
Date of decision: 13/04/98

ORAL JUDGEMENT [Per : Abichandani, J.]

The Income Tax Appellate Tribunal, Ahmedabad has referred the following question for the opinion of this Court under Section 256 (1) of the Income Tax Act.

"Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sales tax liability is paid before the due date for filing of return under section 139 (1), addition cannot be made invoking the provisions of section 43B ? "

The question referred to this Court now stands concluded by the decision of Hon'ble the Supreme Court in Allied Motors (P) Limited vs. C.I.T., reported in 224 ITR 677 in which the view expressed by this High Court in C.I.T vs. Chandulal Venechand reported in 209 ITR 7 was approved by the Supreme Court. In Chandulal Venechand's case, this Court while construing the provisions of Section 43-B had taken a view that the proviso to Section 43-B of the Act related back to the date when Section 43-B came into operation i.e., April 1, 1984. It was held that such liability would therefore be allowable as a deduction provided the assessee established that it was discharged by actual payment before the date applicable in his case for furnishing the return of income under Section 139 (1) of the Act in respect of relevant previous year in which the liability had been incurred.

In view of this settled legal position, the question referred to this Court is answered in the affirmative in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

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Prakash*